

**EXHIBIT E**

STATE OF NEW YORK

SUPREME COURT

: COUNTY OF QUEENS

-----  
TRISTATE CLEANING SOLUTIONS INC.,

Plaintiff,

-vs-

INDEX NO. 704723/2017

LANDCO H&L INC.,  
and BALLY BAO,

Defendants,

LOUNG CONSTRUCTION INC.,

Supplemental Defendant.  
-----

Examination Before Trial of **JOHN SCHENNE**,  
**P.E.**, held before Amanda Virolas, Notary  
Public, at The Law Office of Thomas Burton,  
403 Main Street, Suite 716, Buffalo, New York,  
on Friday, June 1st, 2018 at 1:17 p.m. to 2:22  
p.m., pursuant to notice.

-----**DEPAOLO-CROSBY REPORTING SERVICES, INC.**-----

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1 Schenne & Associates?

2 A. Yes.

3 Q. Can you describe generally basically for the  
4 last five years or so what primarily type of  
5 work or projects you get involved with?

6 A. We design building and sites.

7 Q. Okay. Are you familiar with the property  
8 known as 337 Main Street, Buffalo, New York?

9 A. Yes.

10 Q. Do you have a role with respect to developing  
11 that property?

12 A. Yes.

13 Q. And what is your role?

14 A. My current role is the engineer of record.

15 Q. That's your current role?

16 A. That's my current role.

17 Q. And when did you first become familiar with  
18 the 377 Main Street project?

19 A. In 2013 there was -- actually before that,  
20 around 2010 the old owner hired me. They had  
21 some problems with bricks falling off the  
22 building and I helped him design a demolition  
23 of the 14-story chimney that was on the

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1 A. I'm the engineer of record, yes.

2 Q. The engineer of record. I'm sorry.

3 And who approached you about becoming  
4 president?

5 A. That would be Bally Bao.

6 Q. Do you know why he wanted you as president as  
7 opposed to someone else or himself?

8 A. I've got a lot of experience in this industry  
9 to get a contracting license. He needed  
10 somebody that was knowledgeable about  
11 construction or he couldn't get a City  
12 license.

13 Q. And then what prompted you to leave in  
14 September 2017?

15 A. Some illegal activity happened on the job and  
16 I'm a person that follows the law and is not  
17 associated with illegal activity. Once I  
18 found out about it I resigned.

19 Q. Okay. I'll leave the illegal activity to the  
20 side for the moment. I'm just interested in  
21 trying to gather evidence for my client which  
22 is breach of contract.

23 Are you familiar with a company called

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1 MR. GORMAN: I do. That's not what it  
2 says though.

3  
4 BY MR. SILVERBERG:

5 Q. Can you explain what you mean by the first  
6 sentence here where it says, "piled excessive  
7 amounts of the building debris?"

8 A. Sure. They put too many bricks on the roof  
9 and the roof fell in. It was an excessive  
10 load.

11 Q. Right. You are an engineer and you have your  
12 master's in engineering?

13 A. That's correct.

14 Q. Right. So "excessive" would have to be  
15 relative to the constructional capacity of  
16 supporting structure; is that accurate?

17 A. That's accurate.

18 Q. So did you ever do any calculations to  
19 determine if the load exceeded the capacity of  
20 the structure?

21 A. I did not do any calculations.

22 Q. So how did you know that the load exceeded the  
23 capacity of the structure?

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1 loads.

2 Q. Well, that might be true. I don't know if  
3 that's true or not true. Until you run your  
4 calculations you can't be 100 percent sure; is  
5 that accurate?

6 A. I don't think it is accurate. We're talking  
7 in data here. Too many bricks were put on the  
8 roof, the roof fell in. I think the  
9 approximate cause of the roof falling in was  
10 too many bricks on the roof.

11 Q. Unless you run calculations you don't know  
12 exactly how many bricks would it take to  
13 undermine the roof especially with safety  
14 factors as well; isn't that accurate?

15 A. I don't think that is accurate.

16 MR. GORMAN: I'll object to the form of  
17 the question. It has been asked and answered.

18

19 BY MR. SILVERBERG:

20 Q. Let's look at Plaintiff's Number 1 for a  
21 moment.

22 A. Okay.

23 Q. So the first sentence says, "Please accept

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1 Q. Now, did Bally Bao report to you as president  
2 of Loung what was taking place on a day-to-day  
3 basis at the project site?

4 A. Not on a day-to-day basis but a couple of  
5 times per week.

6 Q. Okay. Did Bally Bao inform you that the power  
7 pit -- the roof was being removed?

8 A. What power pit?

9 Q. Power pits.

10 A. Parapets.

11 Q. Parapets.

12 A. Yes. We had a project meeting a couple of  
13 weeks before the parapets were going to be  
14 demolished.

15 Q. Did Bally Bao ever inform you that the  
16 contract of removing the parapets was putting  
17 the parapets debris on top of the roof?

18 A. No. But I told the contractor, your client  
19 doing the work, don't put anything on the  
20 roof.

21 Q. Okay. Did you provide the contractor with the  
22 means to remove the debris from the roof?

23 A. Contractors are responsible for their own

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1 means and methods whereby, so no, I did not.

2 Q. Was there any discussions about the means and  
3 methods of removing the debris from the roof?

4 A. There was. The contractor had his own little  
5 jib crane that he brought out there. I had  
6 nothing to do with the jib crane. Again, it  
7 falls under the contractor's means and  
8 methods. The owner doesn't get involved in  
9 that. In this case, the general contractor  
10 didn't get involved in those things. Again,  
11 the general contractor is not licensed to have  
12 anything to do with asbestos and asbestos  
13 abatement.

14 Q. Was the removal of the parapets considered  
15 asbestos abatement?

16 A. Yes, it was.

17 Q. The parapets contained asbestos?

18 A. The bricks do not. However, years ago and I  
19 can't tell you when, somebody smeared plastic  
20 roof cement containing asbestos up and down  
21 both sides of the parapets. The parapets were  
22 four to five feet tall. It was completely  
23 contaminated with asbestos and there was not a

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1 good way to get the asbestos out of there  
2 without spending an exorbitant amount of  
3 money.

4 It seems to me -- I heard a discussion  
5 between Tristate and the owner, Bally Bao,  
6 about taking the parapets down because it was  
7 an easy means of getting rid of the asbestos  
8 contaminated bricks.

9 Q. Okay. Are you aware at any point in time that  
10 the roof was being loaded with the debris from  
11 the parapets?

12 A. No. I had told the contractor, don't put  
13 anything on the roof. If they had told me  
14 they were going to load that roof, I would've  
15 stopped working the entire job.

16 Q. Why is that?

17 A. Because the roof is not designed to carry  
18 heavy point loads.

19 Q. In this letter going back to Plaintiff's  
20 Exhibit 2, the second paragraph, it talks  
21 about brass escalator panels being stolen from  
22 the job. Do you see that?

23 A. I see that.

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1 Q. When did those alleged thefts take place?

2 A. I can't tell you for sure. When an asbestos  
3 contractor starts abatement, the job is  
4 secured. On this project the gates were  
5 locked. The only people allowed in the  
6 building are the people who have asbestos  
7 cards and certification. There was negative  
8 air put in the building. Tristate was the  
9 only one that could have people going in and  
10 out of that building.

11 I can't tell you when the panels were  
12 stolen, but I can tell you this: They were  
13 there before they started and when they were  
14 finished they were gone.

15 Q. Okay. Is it accurate to say they were stolen  
16 in November 2016?

17 A. I can't tell you. I didn't go in that job for  
18 months. Again, because it was a contaminated  
19 area.

20 Are you aware that there's pictures  
21 existing that show the stolen panels in the  
22 employee's car?

23 Q. When did you first become aware that the

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1 panels were stolen?

2 A. We got some clean letters from the third-party  
3 asbestos monitor, and the stairwells got  
4 cleaned out, and I would guess that that was  
5 January, February timeframe. Slowly, slowly,  
6 floor by floor we got clean letters. As soon  
7 as I got on one of the floors with the  
8 escalators I could see that somebody recently  
9 had removed the panels. There were still  
10 brass sawdust from a saw where the panels had  
11 been cut loose from the escalators and stole  
12 them.

13 Q. And are you aware that Billy Bao took a  
14 picture of what he alleged was the panel in  
15 the back of someone's truck?

16 A. Yes, -I saw that picture.

17 Q. Do you recall when you saw that picture?

18 A. Months after the fact. Had I saw that picture  
19 I would have called the police and had  
20 somebody arrested.

21 Q. Did you call the police when you did see the  
22 picture?

23 A. No.

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1           answered all of their questions, and provided  
2           directions for what they needed to accomplish,  
3           dealt with them on schedule and payments and  
4           everything. The kind of question you asked me  
5           should really be directed to him.

6           Q. Give me one second here.

7                     If you don't have this in front of you I  
8           can send it to you, but when I asked Mr. Bao  
9           at his deposition -- "Who is responsible for  
10          making the determination to terminate  
11          Tristate?"

12                    Answer from Bally Bao, "John thinks that  
13          Tristate didn't do a good job."

14          A. It's true Tristate didn't do a good job.

15          Q. Why do you say Tristate did not do a good job?

16          A. Because there were over 61 federal violations.  
17          The FBI got called into the job. The criminal  
18          investigators for EPA got called in to the  
19          job. The DOL criminal investigators got  
20          called in to the job. I heard from a DOL  
21          employee it was one of the worst messes  
22          they've ever uncovered.

23          Q. You said there was 61 violations, is that

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1 J. Bao

2 A I'm not sure.

3 Q The roof that collapsed, was it  
4 made of steel, was it made of wood?

5 A The entire roof consists of steel  
6 and wood.

7 Q Where it collapsed, was it at the  
8 point where the roof beam sits on the  
9 concrete, did the concrete or the beams fail;  
10 what caused it to break?

11 A So there was a wall on the roof  
12 and there was asbestos on the wall, so they  
13 need to remove the asbestos on the wall.  
14 When they removed asbestos, they put it on  
15 the roof, that's why it collapsed.

16 MR. SILVERBERG: Can you  
17 read back the last question.

18 (Whereupon, the question was  
19 read back.)

20 A So the beam was broken, was  
21 crashed.

22 Q Did you take any pictures of the  
23 crushed beam?

24 A I think I did. So, this is the  
25 crushed beam.

1           2017. I shut the job down on March 27th,  
2           2017.

3           Q. Okay. So --

4           A. As soon as I found out there was illegal  
5           activity on that job and employees and people  
6           on the sidewalk were put at risk for what was  
7           going on I closed the job down and notified  
8           the DOL.

9           Q. You might be familiar with the term "state of  
10          mind" because it's kind of in the news lately.  
11          On another subject, I'm trying to understand  
12          where your state of mind was on March 17th,  
13          2017. What knowledge did you have to justify  
14          the termination? You're telling me the FBI  
15          didn't show up until afterwards. You didn't  
16          really know about the 61 violations until  
17          afterwards.

18                 On March 17th, 2017, what did you know?  
19          What were you thinking that justified you  
20          saying that Tristate was not doing a good job?  
21          A. The roof fell in. The roof fell in and the  
22          brass panels got stolen. That to me is enough  
23          to say that somebody is not doing a good job.

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1 J. Bao

2 please?

3 MR. SILVERBERG: Can you

4 read back the question?

5 (Whereupon, the question was

6 read back.)

7 A Yes.

8 \*MR. SILVERBERG: I call for

9 production of those documents.

10 MR. GORMAN: Please put your

11 requests in writing. We'll take

12 it under advisement. That goes

13 for any request for documents

14 made during the deposition.

15 Q You claim that Tristate was

16 responsible for copper that went missing from

17 the escalator; is that accurate?

18 A Yes.

19 Q Why do you say that Tristate is

20 responsible for that?

21 A Because I witnessed that.

22 Q Well, describe for us what you

23 witnessed?

24 A Previously the copper was at the

25 escalator and the edge of the escalator.

1 A. Let me ask you a --

2 MR. GORMAN: I'm going to object.

3 That's not a question, it doesn't prompt an  
4 answer. If there's a question then you can  
5 ask it.

6  
7 BY MR. SILVERBERG:

8 Q. Going back to Plaintiff's Exhibit Number 2,  
9 paragraph 1. The last sentence says, "The  
10 work has increased project time by a couple of  
11 months."

12 Are you familiar with the term "critical  
13 path method?"

14 A. Sure.

15 Q. Did you ever run a schedule analysis or a  
16 critical path method to determine how much of  
17 a delay this roof issue caused?

18 A. I did not. We received a Stop Work Order from  
19 the City of Buffalo and the job was shut down  
20 for a couple of months while the roof was  
21 short up.

22 Q. Was there any reason why the asbestos work  
23 couldn't continue on the other floors during

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1 the roof work?

2 A. There was a Stop Work Order on the job. The  
3 work stopped except for emergency showing to  
4 make sure nothing else fell down. And the  
5 entire asbestos crew was put on trying to get  
6 all the asbestos contaminated bricks off of  
7 six-floor roof.

8 Q. In this point in time, what's the timeframe  
9 for this? You said you left your role as  
10 president at the end of March; is that  
11 accurate?

12 A. That's correct.

13 Q. And so were you involved with the new contract  
14 of getting the men to remove the bricks on the  
15 roof?

16 A. I'm not sure which men removed the bricks. I  
17 thought it was Tristate's men who removed the  
18 bricks from the roof, that's my recollection.

19 Q. Okay. So after -- go back to Plaintiff's  
20 Exhibit 3, if you look at the second bullet  
21 point it says, "The roof collapsed on November  
22 3rd." This third bullet point says that there  
23 was theft on November 30th by workers. So it

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1           that were on the roof?

2           A. If you look at some of the pictures from the  
3           job -- first of all, I have to tell you  
4           something. Your client kept the collapse  
5           secret from me for two days. We didn't find  
6           out about it until two days after the roof  
7           fell in, in which time his members over there  
8           doing God knows what. So by the time I found  
9           out about it and sent my people over there,  
10          two days it had collapsed. And I can tell  
11          certain things happened in that job when we  
12          weren't around. I can tell from the pictures  
13          that are available that my man took that the  
14          bricks were piled up four, five feet deep.

15                 We think the load from that is 200, 300  
16          per square foot. It's a tremendous load.

17                 MR. SILVERBERG: Can the court reporter  
18          read back the last question, please.

19                         (The last question was read.)

20                 THE WITNESS: I don't have any physical  
21          calculations, but the bricks were stacked four  
22          to five feet tall in these bags. It is my  
23          estimation as an engineer with 40 years of

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1           experience that the load that came off of that  
2           was 200 to 300 pounds per square foot.

3  
4           **BY MR. SILVERBERG:**

5           Q. You said they were stacked five feet high?

6           A. Up to five feet high, yes.

7           Q. Did you ever personally witness -- did you  
8           personally see these bricks that were stacked  
9           five feet high?

10          A. No.

11          Q. How did you know it was stacked five feet  
12          high?

13          A. Because I got pictures that's shown they're  
14          stacked five feet high.

15          Q. Was there somebody standing next to the bricks  
16          that was five feet high? How can you tell  
17          that was five feet high?

18          A. That's what they appear to be from the  
19          picture. These pictures were taken from above  
20          looking down at the collapsed roof section.

21          Q. As you know it can be five feet high but over  
22          what span length of the beam, so you might  
23          have five feet high for only two feet of a

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